UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DANNY CLINCH,

Plaintiff,

-against-

PLANET PRODUCTIONS LLC, BIOWORLD MERCHANDISING, INC., AMARU/AWA MERCHANDISING, INC., and URBAN OUTFITTERS, INC., and FOREVER 21, INC.

Defendants.
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Civ. Action No.
17 Civ. 4099

COMPLAINT

Plaintiff, by his attorneys, Joel L. Hecker, Esq. of Law Offices of Joel L. Hecker, as and for his complaint against defendants herein, alleges as follows:

JURISDICTION

1. This action arises under Title 17 of the United States Code, and jurisdiction is vested in this Court under 28 U.S.C. Sec. 1338. Proper venue exists under 28 U.S.C. Sec. 1400(a) in that defendants reside, do business and/or may be found in this district and certain of the transactions complained of occurred in this district.

THE PARTIES

2. Plaintiff is and at all relevant times herein has been a resident of New Jersey and maintains offices in the City, County and State of New York.

3. Upon information and belief, defendant Planet Productions LLC ("Planet") is a foreign corporation with offices at 191 East Broad Street #206, Athens, CA 30601, and is in the business of manufacturing, distributing and selling, inter alia, apparel items, including tee shirts.

4. Upon information and belief, defendant Bioworld Merchandising, Inc. ("Bioworld") is a corporation with offices at 49 West 37th Street, 12th Floor, New York, NY 10018 and is in the business of manufacturing, distributing, and selling apparel wear, including tee shirts.

5. Upon information and belief, defendant Amaru/AWA Merchandising, Inc. ("Amaru") is a foreign corporation with offices care of Sheridan Taylor Group, 14724 Ventura Boulevard, Penthouse, Sherman Oaks, CA 91403, and holds itself out to and is the officially appointed agent for the trademark and images of Tupac Amaru Shakur.

6. Upon information and belief, defendant Urban Outfitters, Inc. ("Urban") is a foreign corporation with principal offices at 5000 South Broad Street, Philadelphia, PA 19112-1495, and maintains retail stores within the city and county of New York.

7. Upon information and belief, defendant Forever 21, Inc. ("Forever 21") is a foreign corporation with principal offices at 3880 N. Mission Road, Los Angeles, CA 90031, and maintains retail stores within the City and County of New York.

COUNT I

COPYRIGHT INFRINGEMENT

8. Plaintiff is and at all relevant times herein has been engaged in the business of creating professional photography.

9. Prior to commencement of this action, plaintiff caused two photographs of Tupac Amaru Shakur ("Tupac") to be created (the "Copyrighted Photographs"). The Copyrighted Photographs were and are wholly original to plaintiff and are copyrightable subject matter under the copyright laws of the United States.

10. Plaintiff, by causing the creation of the Copyrighted Photographs, thereby secured the exclusive rights granted to the author of copyrightable work under the copyright laws of the United States.

11. Since the creation of the Copyright Photographs, publication of same by plaintiff or under his authority or license has been in strict conformity with the provisions of the copyright laws.

12. Since the creation of the Copyrighted Photographs, plaintiff has been the sole proprietor of all rights, title and interest in and the copyright of said Photographs.

13. Prior to the commencement of this action, plaintiff complied in all respects with the United States Copyright Act and all other laws governing copyrights by filing the Copyrighted Photographs with the United States Copyright Office, along with payment of the requisite fees, and obtained registration thereof effective January 14, 2002, pursuant to registration numbers VA 1-116-066 and VA 1-116-230.

14. Pursuant to a License Agreement dated January 1, 2011, by and between Planet and Bioworld, Planet granted Bioworld the right to produce, manufacture, and distribute photographic images of Planet's roster of music artist clients (the "Planet/Bioworld Agreement").

15. Pursuant to a License Agreement dated as of February 20, 2012, by and between Amaru and Planet, Amaru purported to license to Planet the use of the photographic images of Tupac, including the Copyrighted Photographs, for all apparel items (the "Planet/Amaru Agreement").

16. The Planet/Amaru Agreement purported to grant such license on behalf of the copyright owner but did not state the name of the copyright owner of each individual

photograph, thereby inferring that Amaru was able to, and did, make representations as, or on behalf of, the owner of the copyright of such photographs, including the Copyrighted Photographs.

17. Upon information and belief, Planet, which knew that the Copyrighted Photographs were in fact subject to copyright, did not undertake any due diligence to determine who was the copyright owner of the Copyrighted Photographs, which information was readily publicly available or certainly available from Amaru.

18. As a result of the Planet/Amaru Agreement, Planet added the photographs of Tupac licensed pursuant to such Agreement, including the Copyrighted Photographs, to the Planet/Bioworld Agreement, and Planet thereby authorized Bioworld to produce, manufacture and distribute such photographic images of Tupac, including the Copyrighted Photographs.

19. Pursuant thereto, Planet and Bioworld produced, distributed, and sold the Copyrighted Photographs on tee shirts designated as "Me Against the World", "All Eyez on Me", "Sublimation Tupac", "Heads Up" and "Tupac Photo OO" (the "Infringing Tee Shirts") and perhaps other apparel which included the Copyrighted Photographs.

20. Planet and Bioworld, as part of its plan of distribution and sale sold the Infringing Tee Shirts to Urban and to Forever 21, which in turn marketed, distributed, and sold such Infringing Tee Shirts to the public through their respective retail stores and online.

21. Upon information and belief, revenue derived by Planet from the sale of such Infringing Tee Shirts is in excess of $522,287.

22. Upon information and belief, license fees paid by Planet to Amaru from the sale of such Infringing Tee Shirts is in excess of $86,000.

23. Upon information and belief, Bioworld earned substantial profits from the sale of such Infringing Tee Shirts.

24. Upon information and belief, Urban earned substantial profits from the sale of such Infringing Tee Shirts.

25. Upon information and belief, Forever 21 earned substantial profits from the sale of such Infringing Tee Shirts.

26. Defendants, without the authorization, knowledge or consent of plaintiff, deliberately and wilfully copied, displayed, distributed, and sold the Copyrighted Photographs on such Infringing Tee Shirts and perhaps other apparel which included the Copyrighted Photographs.

27. These uses of the Copyrighted Photographs on the Infringing Tee Shirts, without plaintiff's permission, authorization or consent, were deliberate infringements of plaintiff's copyright in his work.

28. Defendants thus violated plaintiff's exclusive rights in the copyright to the Copyrighted Photographs, in violation of Sections 106(2) and (5) of the Copyright Act of 1976, 17 U.S.C. Sections 106(2) and (5).

WHEREFORE, plaintiff demands judgment against defendants, jointly and severally, as follows:

(A) that defendants, their agents, servants, employees, officers, attorneys and all those persons in active concert or participation with each and any of them be enjoined during the pendency of this action and permanently, from directly or indirectly infringing the Copyrights of plaintiff in any manner, and from producing, distributing, or selling the Infringing Tee Shirts or any other merchandise infringing the Copyrighted Photographs.

(B) that defendants be required to deliver up to plaintiff to be impounded during the pendency of this action, and deliver up for destruction all merchandise, including but not limited to the Infringing Tee Shirts, packaging, advertisements, and all or other material infringing the Copyrighted Photographs, which are in their possession or under their control;

(C) for an accounting of the proceeds derived by defendants from the production, distribution, and sale of the Infringing Tee Shirts and other infringing merchandise and upon such accounting, that defendants pay to plaintiff damages provided by statute for defendants' statutory copyright infringement, and all monies determined to be benefits generated or arising from such infringing material, and the damages which plaintiff has suffered as a result of such infringement which is believed to be in excess of $600,000; and

(D) that defendants pay to plaintiff all the costs and expenses of this action, including reasonable attorneys' fees to be assessed by the Court, plus interest as appropriate, and such other and further relief as to this Court seems just and proper.

Dated: New York, New York
May 31, 2017

Law Offices of Joel L. Hecker

By:____________________________

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